

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Further Forbearance from )  
Title II Regulation for Certain )  
Types of Commercial Mobile )  
Radio Service Providers )

GN Docket No. 94-33

REPLY COMMENTS OF THE NYNEX CORPORATION

NYNEX Corporation ("NYNEX") submits the following Reply Comments in response to comments filed in connection with the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

In the Notice, the Commission sought comment on whether it should forbear from applying certain sections of Title II of the Communications Act to certain commercial mobile radio service ("CMRS") providers.<sup>1</sup>

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1. The Commission tentatively decided to continue to apply Sections 210, 213, 215, 218, 219, 220 and Section 223 to all CMRS providers and is considering forbearance from applying Sections 225, 226, 227 and 228 to certain CMRS providers.

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NYNEX showed in its comments that the Commission's Congressional mandate requires it to ensure "that CMRS licensees providing substantially similar services will not be subject to inconsistent regulation arising out of their prior regulatory status."<sup>2</sup> Thus, the Commission must avoid applying different sets of rules or different regulatory treatment to subsets of CMRS providers. The majority of commenters agree that the Commission must refrain from adopting an asymmetrical regulatory scheme that applies different rules to different subsets of CMRS providers.<sup>3</sup> These comments convincingly demonstrate that the Commission should continue to apply Sections 210, 213, 215, 218-220, 223, 225, 227 and 228 to all CMRS providers. The record also demonstrates that the Commission should forbear from applying Section 226 to any CMRS provider.<sup>4</sup>

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<sup>2</sup> See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, Gen. Docket No. 93-252, FCC 94-31 (released March 7, 1994), ¶¶173-182, 196, 272 (Second Report and Order); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) (Budget Act), to be codified at 47 U.S.C. §§303(n), 332. See also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, FCC 94-115 (May 20, 1994) ("Further Notice").

<sup>3</sup> See e.g., comments filed by McCaw ("asymmetrical regulation is not warranted"); Bell Atlantic ("selective forbearance . . . embarks the Commission on the wrong course"); GTE (the Commission must "avoid selective or disparate treatment"); Alltel ("regulatory symmetry must be maintained"); and SBMS ("imposing regulatory disparities is off the mark").

<sup>4</sup> SBMS at 10-15, Alltel at 3, GTE at 6-7, Southern at 6, Bell Atlantic at 8-9 and McCaw at 4-5.

II. THE COMMISSION SHOULD NOT FORBEAR FROM APPLYING SECTIONS 210, 213, 215, 218-220, 223, 225, 227 and 228

Commenters have shown that the Commission should continue to apply the provisions of Sections 210, 213, 215, 218-220, 223, 225, 227 and 228 to all CMRS providers in order to serve important public interest goals.<sup>5</sup> Indeed, of the commenters that object to these provisions,<sup>6</sup> not one refutes the fact that these sections embody provisions that are necessary to promote public interest objectives. Moreover, none of the objectors has demonstrated that the public would not be adversely affected by forbearance or that the cost of compliance with these provisions outweighs the benefit to the public. Accordingly, Commission should not forbear from applying these provisions to CMRS providers.

III. THE COMMISSION SHOULD FORBEAR FROM APPLYING SECTION 226 TO CMRS PROVIDERS

In its comments, NYNEX argued that the Commission should continue to apply the provisions of Section 226, the Telephone Operator Consumer Services Improvement Act ("TOCSIA"), to CMRS providers. Upon our review of the positions of other commentors on this issue,<sup>7</sup> NYNEX is persuaded that Section 226

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<sup>5</sup> NYNEX at 4-6. See generally, comments filed by CTIA, Alltel, Bell Atlantic, McCaw, AT&T, Southern, Pacific and Nevada Bell.

<sup>6</sup> Comments filed by Nextel, Geotek, NABER, UTC and E.F. Johnson.

<sup>7</sup> Alltel at 3, GTE at 6-7, Bell Atlantic at 2, McCaw at 4 and SBMS at 10.

is designed to address potential problems associated with interstate operator services provided in conjunction with landline services. The Section was not intended to apply to wireless services. Indeed, there is no reason to believe that the provisions of Section 332 are necessary to protect mobile service customers.<sup>8</sup> As several parties have noted, there is no evidence of consumer complaints regarding mobile public phone services. Moreover, the incentive of mobile public phone providers is to maximize usage by keeping rates reasonable.<sup>9</sup> Thus, in the context of wireless services, enforcement of TOCSIA is not necessary to protect consumers against unjust and unreasonable rates.<sup>10</sup> Quite the contrary, the application of TOCSIA to CMRS is likely to disserve roaming mobile service consumers by increasing costs of service.<sup>11</sup>

#### IV. CONCLUSION

The Commission must strive to achieve equitable regulatory treatment and must avoid carving artificial regulatory distinctions between subsets of CMRS providers. Accordingly, NYNEX urges the Commission not to forbear from applying the provisions of Sections 210, 213, 215, 218-220, 223,

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<sup>8</sup> Infra n.4.

<sup>9</sup> McCaw at 4, citing PCIA, McCaw and GTE.

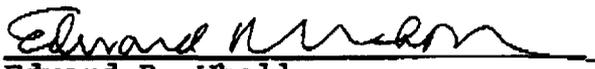
<sup>10</sup> GTE, Petition for Reconsideration, GN Docket No. 93-252 filed May 19, 1994 at 2-4.

<sup>11</sup> Id. at 7. See also, Bell Atlantic at 2 and SWBC at 20.

225, 227 and 228 of the Communications Act to certain CMRS providers, as discussed herein. In addition, the Commission should forbear from applying Section 226 to any CMRS provider.

Respectfully submitted,

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Dated: July 12, 1994

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF THE NYNEX CORPORATION**, was served by first class United States Mail, postage prepaid, on each of the parties indicated on the attached service list, this 12th day of July, 1994.

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